



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R06-OAR-2016-0716; FRL-9977-26-Region 6]

#### Approval and Promulgation of Implementation Plans; Texas; Interstate Transport Requirements for the 1997 and 2006 PM<sub>2.5</sub> NAAQS

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving portions of three Texas State Implementation Plan (SIP) submittals pertaining to CAA requirements to prohibit emissions which will significantly contribute to nonattainment or interfere with maintenance of the 1997 and 2006 fine particulate matter (PM<sub>2.5</sub>) National Ambient Air Quality Standards (NAAQS) in other states.

**DATES:** This rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2016-0716. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733.

**FOR FURTHER INFORMATION CONTACT:** Carl Young, 214-665-6645,

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**SUPPLEMENTARY INFORMATION:** Throughout this document “we,” “us,” and “our” means the EPA.

## **I. Background**

The background for this action is discussed in detail in our February 14, 2018 proposal (83 FR 6493). In that document we proposed to approve portions of three Texas SIP submittals pertaining to the CAA section 110(a)(2)(D)(i)(I) requirements based on our conclusion, which is consistent with the State's ultimate conclusion, that emissions from Texas will not significantly contribute to nonattainment or interfere with maintenance of the 1997 and 2006 PM<sub>2.5</sub> NAAQS in other states. Specifically, we proposed to approve (1) the portions of the April 4, 2008 and May 1, 2008 SIP submittals for the 1997 PM<sub>2.5</sub> NAAQS and (2) the portion of the November 23, 2009 submittal for the 2006 PM<sub>2.5</sub> NAAQS, as they pertain to CAA section 110(a)(2)(D)(i)(I).

We received comments in support of our proposal from the Texas Commission on Environmental Quality (TCEQ) and Vistra Energy Corporation. TCEQ also noted in their comments that they disagree with EPA’s method for determining significant contribution to nonattainment or interference with maintenance of the NAAQS in other states. We acknowledge the State’s position and welcome continued discussion and collaboration between EPA and the State on the issue.

## **II. Final Action**

We are approving the portions of the April 4, 2008 and May 1, 2008 SIP submittals for the 1997 PM<sub>2.5</sub> NAAQS and the portion of the November 23, 2009 submittal for the 2006 PM<sub>2.5</sub> NAAQS, as they pertain to CAA requirements to prohibit emissions which will significantly

contribute to nonattainment or interfere with maintenance of the 1997 and 2006 PM<sub>2.5</sub> NAAQS in other states.

### **III. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days

after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements.

(See section 307(b)(2).)

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter.

Dated: May 8, 2018.

**Anne Idsal,**  
*Regional Administrator, Region 6.*

40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart SS – Texas**

2. In §52.2270(e), in the second table, titled “EPA-Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP,” revise the entry for “Infrastructure and Interstate Transport for the 1997 Ozone and the 1997 and 2006 PM<sub>2.5</sub> NAAQS” to read as follows:

**§52.2270 Identification of plan.**

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(e) \* \* \*

**EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE  
TEXAS SIP**

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/ effective date	EPA approval date	Comments
* * * * *	* * * * *			

Infrastructure and Interstate Transport for the 1997 Ozone and the 1997 and 2006 PM <sub>2.5</sub> NAAQS	Statewide	12/12/2007, 3/11/2008, 4/4/2008, 5/1/2008 11/23/2009	12/28/2011, 76 FR 81371	Approval for CAA elements 110(a)(2)(A), (B), (E), (F), (G), (H), (K), (L), and (M). Full approval for CAA elements 110(a)(2)(C), (D)(i)(II), (D)(ii) and (J) with approval of the GHG PSD revision (11/10/2014, 79 FR 66626). 1997 and 2006 PM <sub>2.5</sub> element D(i)(I) approved <b>[Insert date of publication in the Federal Register], [Insert Federal Register citation]</b>
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